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SUBJECT: SPECIAL COURT FOR SIERRA LEONE: NEW SPECIAL PROSECUTOR AND USG VISITORS

Classified By: AMBASSADOR THOMAS N. HULL FOR REASONS 1.4 (B) AND (D).

SUMMARY

¶1. (C) The Special Court for Sierra Leone (SCSL) recently announced the appointment of Stephen Rapp as the new Special Prosecutor. Mr. Rapp called on the Ambassador December 14. In separate visits by AF/W Director Phil Carter on November 15 and Special Advisor to the Ambassador-at-Large for War Crimes Mark Stamilio on December 7, SCSL officials raised issues along common themes, including Court funding levels, the pace of trials, resources for the defense, preparations for the Charles Taylor Case, and indications of a possible delay from the planned April 2 start date for the Taylor trial. Meetings included the Court's president, Prosecutor's office, Registrar, and representatives from the Defender's office. The Court has completed one trial and will begin the Charles Taylor and continue the RUF trials next year. All SCSL officials expressed strong appreciation for continuing USG support for the Court. END SUMMARY.

AMBASSADOR MEETS SCSL NEW SPECIAL PROSECUTOR

¶2. (C) On December 14, the Ambassador met with new Special Prosecutor Stephen Rapp. Rapp assured the Ambassador that his office would work closely with S/WCI, and that after the Status Conference on January 26, he would speak to the Department about funding issues. The Ambassador said that the funding issue remains unclear while we are under a continuing resolution, and that the Department is discussing approaches to avoid zeroing out ESF to Sierra Leone in order to support the Court. The Ambassador encouraged Rapp to pursue other donors and cautioned him that fundraising could be a large distraction. Rapp informed the Ambassador that he would likely travel to Washington with President of the Court Justice Gelaga-King in January. The Ambassador also encouraged Rapp to keep Acting Prosecutor Chris Staker on staff as his deputy, both for continuity and for Staker's expertise in appeals. Rapp responded that he was interested in retaining Staker.

¶3. (C) The Ambassador raised the status of the fund for protection of witnesses that the USG had funded. Rapp was unaware of this fund and said he would ask the Chief of Investigations for details.

AF/W DIRECTOR MEETING WITH PRESIDENT OF THE SCSL

¶4. (C) On November 15, AF/W Director Phil Carter met with President of the SCSL Justice Gelaga-King at the Special Court's compound in Freetown. King reported that the Court

was discovering a number of administrative challenges in the upcoming trial of former Liberian President Charles Taylor, and that he was keenly aware that the Court needed to show that it was continuing to move forward efficiently. Carter encouraged King to keep all trials on track with no surprises according to the completion strategy and commended the Court's groundbreaking work for adding value to the democratization process in Sierra Leone.

¶ 15. (C) King said that the Court was developing a revised completion strategy to ensure that it stayed on course and that a number of proposed changes would make the Court "leaner and meaner." He noted proposals to have the President of the Court reside in Sierra Leone full-time, and that appeals judges would live in Sierra Leone next year saving considerable travel time and expenses. He assured Carter that the judges were committed to expediting the trials and staying within the completion strategy. He added that the Court continued to face funding difficulties and that the voluntary funding process by donors had not worked. He explained that without a guaranteed funding stream, long-term planning was impeded and staff retention was weakened. He ended the meeting by expressing his appreciation for USG support for the Court.

MEETINGS WITH THE REGISTRAR

¶ 16. (C) On November 15, AF/W Director Carter met with Registrar Lovemore Munlo, who assured him that the Court was sticking to a reasonable time frame and operating efficiently despite considerable constraints. Munlo said that the Armed Forces Revolutionary Council (AFRC) case, which started in March 2005, and the Civil Defense Force

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(CDF) case, begun in June 2004, had finished in Trial Chamber Two, and estimated that the Justices would take three to four months to write judgments. (Note: Closing arguments were held on December 8, as planned.)

¶ 17. (C) Munlo told Carter that the Court's management team had decided to use Trial Chamber Two to try the Taylor case in The Hague. He anticipated that the Taylor case would start around early April and would last 24 to 30 months. Munlo planned to travel to The Hague to sign an agreement and negotiate funding for security for the trial. The ICC was insisting on separate funding to provide security and had proposed charging by the hour, which would be extremely costly. He planned to discuss alternative billing options for security.

¶ 18. (C) Munlo said that if the judgments for the AFRC and CDF judgments were written next year, that would only leave the Revolutionary United Front (RUF) case, begun in July ¶ 2004. He estimated that the RUF trial would conclude during ¶ 2008.

¶ 19. (C) Munlo told Carter that there was a great reluctance by African countries to provide prison facilities for anyone convicted by the Court, but that the UK had agreed to take Taylor. He said that if no other countries step forward, the Court would probably need USG assistance to encourage other countries to take the prisoners.

¶ 10. (C) Munlo complained that donor support continued to wane, and that the Court only had enough funding to last until early March 2007. He said that the management committee had devised a backup plan to streamline Court operations, and that before it went to donors to seek additional assistance, would write a completion strategy by July 2007. When asked for a ballpark funding figure, Munlo responded that he would be better able to provide a final figure in 2007. He noted that the Court had already begun to scale back on staffing. Carter suggested that the

management committee more aggressively pursue donors and reiterated USG support for the Court. Munlo said that the Court's President, Justice Gelaga-King, would visit Washington in January to continue these discussions.

¶11. (C) Munlo told Special Advisor to the Ambassador-at-Large for War Crimes Issues Mark Stamilio during their December 7 meeting that the Court was in unchartered waters as it began groundbreaking operations in The Hague for the Charles Taylor case. He said that many challenges lay ahead, including identifying office space, transferring staff, resolving outstanding technical issues, and allowing both the prosecution and defense the necessary time to prepare for trial.

¶12. (C) Munlo said that the Court would begin transferring staff to The Hague in March, and that the Taylor case would probably be delayed possibly as late as July or September to allow the defense more time to prepare. Stamilio inquired if the prosecution would oppose the delay. Munlo responded that the prosecution agreed that the defense needed more time. For the recently completed CDF and AFRC trials, Munlo said that the judgments would be finished around April and May. He also said that the lone remaining trial, for the RUF, would begin in May.

¶13. (C) Stamilio asked Munlo about the recent visit of Judge Antonio Cassese to Freetown. Munlo said that he had "mixed reactions" to the visit. (Note: Cassese, in his soon-to-be released assessment report of the Court's productivity, is critical of the Registrar's performance.)

¶14. (C) Stamilio reminded Munlo that the Court needed to continue showing progress, and that the Registrar needed to exercise stronger leadership to manage the judges. He added that donor fatigue was likely a product of donors feeling like the trials had gone on long enough. Munlo responded that he heard the message "loud and clear."

¶15. (C) Munlo said that Germany had pledged 1.4 million Euros but gave specific instructions that the money not be used for the Taylor case. Stamilio told Munlo that the Department was still waiting to hear from the Court about a list of countries the Department should contact on the Court's behalf for assistance. Stamilio also told Munlo that discussions amongst various offices in the Department were ongoing regarding funding. Munlo thanked Stamilio for USG leadership on the funding issue.

MEETINGS WITH THE PROSECUTION

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¶16. (C) In Carter's November 15 meeting with then Acting Special Prosecutor Chris Staker, Staker hinted that the Taylor defense team would not be ready to start the trial in April. He said that he felt that if the Defense requested an extension, it would be granted one. According to Staker, a status conference originally planned for the end of October had been pushed back to January 26. He added that there was a possibility of slippage in dates of the RUF trial as well.

¶17. (C) Staker said that there was a push in the CDF trial to refer the case to the national Courts in the event that Johnny Paul Koroma was captured following the conclusion of this trial.

¶18. (C) Staker sought Carter's views on the best method for archiving the evidence following the conclusion of the work of the Court. Staker felt that the evidence could be made available to other law enforcement agencies to help with other cases and should be preserved in a way that case files could be accessed and reconstituted. He offered a number of

general archival ideas, which included setting up an arrangement between all war crimes tribunals to maintain records jointly or appointing a permanent institution, like the ICC, to be the records repository. He mentioned another possibility of creating a new institution to archive records or appointing one country to take on archiving responsibilities. Carter told Staker that he would raise the issue when he returned to Washington.

¶19. (C) Stamilio met with Chief of Prosecutions Jim Johnson on December 7. Johnson said that it was unrealistic that the Taylor case would start in April, and that the Defense would file a motion for a start date in September. He added that Judge Cassese thought that this was acceptable. He said from the beginning, the preference had been for a July start date, followed by an August recess, and resumption in September. He said that the Prosecution would not oppose the delay, and actually conceded that a summer start date was reasonable with the amount of necessary preparations. He thought that it was to the Prosecution's advantage to start later.

¶20. (C) Stamilio reiterated that it was necessary to see progress in the trials as it becomes harder to secure funding for the Court. He said that the Court risks being labeled as inefficient since it has not returned any verdicts in nearly four years. Johnson agreed that the three cases should have been completed a year ago, but said that he could appreciate the Defense's plight given the amount of evidence they received noting, in particular, that the flow of new information and evidence has increased significantly since Charles Taylor's capture. He was not overly concerned that the trial times would be extended further and added that the better prepared both the Prosecution and Defense are, the more streamlined the process will be.

¶21. (C) Johnson mentioned that the Court was starting to fully grasp the challenges of the Taylor case, many of which it had not anticipated. He noted many logistical questions, including how witnesses would travel to trials. Many of the witnesses are coming from Liberia, but would be afraid to travel to The Hague via Freetown for fear of reprisals. The Court would try to keep attorneys, and witnesses, time in The Hague to a minimum to reduce expenses. He said that the Court has not ruled out video teleconferencing, but would probably want most witnesses in the courtroom. Stamilio suggested that Court officials contact the tribunal in Iraq for advice on how they handled similar issues.

¶22. (C) Johnson commented that he had seen a draft of the soon-to-be released Cassese report that critiqued the Court's performance. He said that it focused primarily on needed improvements to communications in the Registrar's office. He appreciated Cassese's identification of the challenges ahead in administering a long-distance trial.

¶23. (C) Johnson said that the decision on a new prosecutor was welcome, as it will allow other things that had previously been on hold to fall into place. He concluded the meeting by requesting assistance in expediting the numerous requests made by the Special Court for certain USG personnel to provide expert testimony in the Charles Taylor case.

MEETINGS WITH PRINCIPAL DEFENDER'S OFFICE

¶24. (C) Deputy Principal Defender Elizabeth Nahamya raised
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defense funding concerns with Carter. She said that something must be done to provide the defense with comparable resources to the prosecution. She explained that the Defense had finalized a contract for Taylor's legal team, but that there were no funds for the Defense office in

Monrovia for investigations and witnesses. She estimated that the Defense would need approximately \$195,000 per quarter during the pre-trial stage to pay the bills. She projected that the trial would cost the defense \$3 million: \$1.7 million in 2007; 1.8 million for 2008, and \$700,000 for 2009. She said that any extended presence in The Hague would raise those figures. Unlike Staker, she did not mention that the Defense had asked for the Taylor trial to be delayed, and said it would begin April 2. She anticipated that final judgments would be written in 2009 and appeals might last four months. Nahamya said that the RUF case would begin May 2, and judgments would most likely be written in early to mid 2008.

¶25. (C) Nahamya said that family members of the defendants in these trials would suffer hardships if the convicted were imprisoned outside of Sierra Leone. She argued that this would preclude large numbers of relatives from visitation.

¶26. (C) During a December 7 meeting, Principal Defender Vincent Nmehielle told Stamilio that the main issue for the Defense was funding equity, and that the credibility of the whole process would turn on the level of resources made available to defense counsel. Nmehielle considered the creation of a Principle Defender's Office an improvement over earlier tribunals, giving the Defense more independence, though still not enough independence, in his opinion. He informed Stamilio that none of the accused had retained private counsel, but that it was likely that Charles Taylor would do so, although to this point, no one has been able to identify assets he may have hidden. Taylor claims to be indigent. (Comment: Despite what Nmehielle described as inadequate remuneration for court-appointed defense counsel, the SCSL has been able to retain fully qualified counsel who have provided all the defendants effective representation.
End Comment)

COMMENT

¶27. (C) The Court is entering a critical phase as it winds up the AFRC and CDF trials, and begins the Taylor case and continues with the RUF trial. In particular, the challenges presented by the Taylor trial will test the Court's leadership. Although designed to avoid the difficulties that previous tribunals have faced, the Court continues to struggle with operational efficiency and must show progress to maintain credibility with its donors. As the Court moves into judgment and appeals processes, it will be important that it retain staff who possess much-needed institutional history and experience. END COMMENT.

¶28. (U) This cable has been cleared by AF/W P. Carter and S/WCI M. Stamilio.

HULL